

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KINGKINER TREE SERVICE, LLC

(b) County of Residence of First Listed Plaintiff **MONTGOMERY**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

ANTHONY SHERR, ESQUIRE

STEFANIE SHERR, ESQUIRE

SHERR LAW GROUP, LLP, 101 W. AIRY STREET

**DEFENDANTS**NEW JERSEY MANUFACTURERS INSURANCE GROUP
AND XL INSURANCE AMERICA, INC.County of Residence of First Listed Defendant **MERCER (NJ)**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332Brief description of cause:
INSURANCE CONTRACT COVERAGE DISPUTE**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
OVER \$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/12/2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 6 PEAR TREE LANE, LAFAYETTE HILL, PA 19344
 Address of Defendant: 301 SULLIVAN WAY, WEST TRENTON, NJ 08628
 Place of Accident, Incident or Transaction: 724 NORRISTOWN ROAD, HORSHAM, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 08/15/2022


 Attorney-at-Law / Pro Se Plaintiff

44603

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)**A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
☐ 2. FELA
☐ 3. Jones Act-Personal Injury
☐ 4. Antitrust
☐ 5. Patent
☐ 6. Labor-Management Relations
☐ 7. Civil Rights
☐ 8. Habeas Corpus
☐ 9. Securities Act(s) Cases
☐ 10. Social Security Review Cases
☐ 11. All other Federal Question Cases
 (Please specify): _____

B. Diversity Jurisdiction Cases:

- ☒ 1. Insurance Contract and Other Contracts
☐ 2. Airplane Personal Injury
☐ 3. Assault, Defamation
☐ 4. Marine Personal Injury
☐ 5. Motor Vehicle Personal Injury
☐ 6. Other Personal Injury (Please specify): _____
☐ 7. Products Liability
☐ 8. Products Liability - Asbestos
☐ 9. All other Diversity Cases
 (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Anthony R. Sherr, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☒ Relief other than monetary damages is sought.

DATE: 8/15/2022


 Sign here if applicable
 Attorney-at-Law / Pro Se Plaintiff

44603
 Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CASE MANAGEMENT TRACK DESIGNATION FORM**

Kingkiner Tree Service LLC	:	CIVIL ACTION
	:	
v.	:	
	:	
New Jersey Manufacturers Insurance Group	:	NO. 2022-
And XL Insurance America, Inc.	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See§ 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.


SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus- Cases brought under 28 U.S.C.§ 2241 through§ 2255. ()
- (b) Social Security- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration- Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management- Cases that do not fall into any one of the other tracks. (X)

08/15/2022

Anthony Sherr, Esquire

Date

Attorney-at-law


Attorney for Plaintiff

484-591-3001

484-210-0099

tsherr@sherrlawgroup.com

Telephone

FAX Number

E-Mail Address

SHERR LAW GROUP, LLP

By: Anthony Sherr, Esquire

Identification No. 44603

Lisa Ondich, Esquire

Identification No. 38567

Stephanie Sherr, Esquire

Identification No. 327824

101 W. Airy Street, Ste. 100

Norristown, PA 19401

(484) 591-3002

Attorneys for Plaintiff
Kingkiner Tree Services LLC

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

KINGKINER TREE SERVICE LLC

6 Pear Tree Lane

Lafayette Hill, PA 19444

Plaintiff

vs.

NEW JERSEY MANUFACTURERS

INSURANCE GROUP

301 Sullivan Way

West Trenton, NJ 08628

and

XL INSURANCE AMERICA, INC.

70 Seaview Avenue

Stamford, CT 06902

Defendants

NO.: 2022-

JURY TRIAL DEMANDED

COMPLAINT - CIVIL ACTION

Plaintiff, Kingkiner Tree Service LLC ("Plaintiff"), by and through its

undersigned attorneys, hereby brings its Complaint for a Declaratory Judgement and Bad Faith against New Jersey Manufacturers Insurance Group and XL Insurance America, Inc. (collectively, “Defendants”), as follows:

Parties

1. Plaintiff is a Pennsylvania corporation with an address of 670 Ridge Pike, Lafayette Hill, PA, 19444.

2. Defendant New Jersey Manufacturers Insurance Group (“NJM Insurance”) is an insurance company with a principal place of business located at 301 Sullivan Way, West Trenton, NJ, 08628. NJM regularly conducts business in the Eastern District of Pennsylvania.

3. Defendant XL Insurance America, Inc. (“XL Insurance”) is a property-casualty insurance company with its principal place of business at 70 Seaview Avenue, Stamford, CT, 06902. Defendant XL Insurance regularly conducts business in the Eastern District of Pennsylvania.

4. Defendant XL Insurance is believed to be subsidiary of Axa S.A., a French multinational insurance firm.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, based upon the diverse citizenship of the parties, and the amount in controversy, which exceeds \$75,000.00, exclusive of interest and costs.

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1367, based upon the state law cause of action.

7. Venue is proper in this Court as Defendants engage in substantial business activity in this district and a substantial part of the events or omissions giving rise to the claims occurred within this district. 28 U.S.C. § 1391(b).

Facts

8. Kingkiner was the Named Insured under a Workers Compensation and Employers Liability Insurance Policy issued by NJM Insurance known as Policy No. W39727-3-21 (“NJM Policy”), which was effective from February 22, 2021 until February 22, 2022. A true and correct copy of which is attached hereto and designated as Exhibit A.

9. Kingkiner was the Named Insured under a Commercial General Liability Policy issued by XL Insurance known as Policy No. NGL-1000879-02 (“XL Policy”), which was effective from July 1, 2021, to July 1, 2022. A true and correct copy of which is attached hereto and designated as Exhibit B.

10. On or about September 6, 2021, during the period that Defendants' insurance policies were in effect, an accident involving a Kingkiner employee Santos Rufino Rosales occurred in Montgomery County, Pennsylvania.

11. Mr. Rosales died as a result of this accident.

12. The vehicle/machine involved in this accident was purchased, owned, and maintained by Kingkiner.

13. At the time of the accident, the vehicle/machine was being operated by an employee of Kingkiner.

14. At the time of the incident, Kingkiner's employees including Mr. Rosales were riding on the vehicle/machine.

15. On or about September 7, 2021, Kingkiner notified Defendant NJM Insurance of the accident and a claim pursuant to the Workers' Compensation and Employers Liability Policy was submitted to Defendant NJM Insurance.

16. On or about October 11, 2021, Defendant NJM Insurance denied Kingkiner coverage for the claim on the grounds that Mr. Rosales "did not suffer a work-related injury" and defined injury to include "aggravation of a pre-existing condition or disease contracted as a result of employment." A true and correct copy of which is attached hereto and designated as Exhibit C.

17. On or about March 23, 2022, Mr. Santos's widow commenced an action against Kingkiner personally, for negligence, wrongful death, and survival before the Court of Common Pleas of Philadelphia County, PA at February Term No. 2807 ("Santos Estate Action"). A true and correct copy of which is attached hereto and designated as Exhibit D.

18. The Santos Estate Action is presently pending before the Court of Common Pleas of Philadelphia County.

19. As a result of the lawsuit against Kingkiner, on or about March 25, 2022, a request for coverage was made under its Commercial General Liability Policy which it had with Defendant XL Insurance.

20. On or about April 11, 2022, Defendant XL Insurance denied Kingkiner coverage for defense costs under the Commercial General Liability Policy on the grounds that the Santos Estate Action alleged that Mr. Rosales was acting in the scope of his employment and that "there is no coverage (including 'defense costs') available for this matter" because the policy "excludes all losses relating to any obligation of the insured under a workers' compensation." A true and correct copy of which is attached hereto and designated as Exhibit E.

21. Kingkiner requested that Defendant NJM Insurance provide it coverage for the defense and indemnification for the Santos Estate Action on or about March 29, 2022.

22. After an unreasonable delay, on or about May 26, 2022, Defendant NJM Insurance declined coverage to Kingkiner on the basis that the Santos Estate Action's "negligence claims are not claims for which NJM could ever be obligated to pay [because] they are not covered by the policy and there is no duty to defend them." A true and correct copy of this letter is attached hereto and designated as Exhibit F.

23. In the May 26 letter, NJM Insurance futilely stated it had "instructed its coverage counsel, Richard J. Williams, Jr., Esq., of the law firm McElroy, Deutsch, Mulvaney & Carpenter, LLP, to assist" Kingkiner's defense counsel. See Exhibit F.

24. Upon information and belief, it is averred that Mr. Williams is not licensed to practice law in the Commonwealth of Pennsylvania.

25. By letter dated June 1, 2022, Kingkiner once again demanded defense and indemnification to the Santos Estate Action under the coverages set forth in Part Two, Employer's Liability Insurance of the Workers Compensation and

Employers Liability Insurance Policy. A true and correct copy of this letter is attached hereto and designated as Exhibit G.

26. On or about June 8, 2022, Kingkiner requested that XL Insurance reconsider its coverage decision as for the Santos Estate Action as a result of the position taken by the plaintiffs in the Santos Estate Action, and the allegations of the Complaint in that action. *See* Exhibit H.

27. After repeated phone calls and emails, Defendant XL Insurance, through its agent, indicated that it would reconsider its opinion on or about July 1, 2022.

28. To date, Defendant XL Insurance has not provide its insured Kingkiner with an updated opinion regarding coverage for the Santos Estate Action.

29. Defendant NJM Insurance, issued a second declination letter on or about, July 6, 2022, once again denying coverage for the Santos Estate Action, but on a different basis from the basis stated in its original letter. A true and correct copy of this letter is attached hereto and designated as Exhibit I.

30. As a result of Defendants' refusals to provide a defense to Kingkiner, Kingkiner hired the undersigned to represent its interests in the Santos Estate Action.

COUNT ONE
DECLARATORY JUDGMENT – KINGKINER V. NJM INSURANCE

31. Kingkiner incorporates by reference the preceding allegations of the Complaint as if fully set forth herein at length.

32. Defendant NJM Insurance has refused to provide Kingkiner with a defense and indemnification for the Santos Estate Action.

33. NJM Insurance denied coverage despite its obligation to provide coverage for law suits.

34. At all times material to this action, Kingkiner employed Mr. Rosales and was insured by NJM Insurance.

35. It is believed and therefore averred that as a result of Defendant NJM Insurance's wrongful refusal to provide workers compensation benefits, the Santos Estate Action commenced against Plaintiff.

36. Due to Defendant NJM Insurance's refusal to provide a defense and refusal to reconsider its position, Kingkiner has no adequate remedy at law and is being irreparably harmed.

37. As a result of NJM Insurance's refusal to honor its obligation to provide a defense in the Santos Estate Action, Kingkiner has suffered and will continue to suffer damages, including, but not limited to costs and expenses it is and will continue to incur in defending the Santos Estate Action.

38. Kingkiner therefore requests this Court to enter a declaratory judgment in favor of it and against Defendant NJM Insurance declaring that Defendant NJM Insurance holds a duty to fully defend and indemnify Kingkiner, in connection with the Santos Estate Action under Defendant NJM Insurance's Workers' Compensation and Employers Liability Policy, and to award Kingkiner its out-of-pocket costs and legal fees as taxable costs.

WHEREFORE, Kingkiner's counsel requests this Court to enter a judgment on behalf of Kingkiner and against NJM Insurance, declaring that it is required to provide a defense to Kingkiner in the Santos Estate Action and to reimburse Kingkiner for its expenditures to defend the Santos Estate Action, plus interest and costs of this action, including but not limited to reasonable attorney's fees and such other relief as this Court deems just and proper.

COUNT TWO
DECLARATORY JUDGMENT – KINGKINER V. XL INSURANCE

39. Kingkiner incorporates by reference the preceding allegations of the Complaint as if fully set forth herein at length.

40. Defendant XL Insurance has wrongfully denied coverage for Kingkiner for the Santos Estate Action, despite its obligation to provide coverage under the Commercial General Liability Coverage.

41. At all times material to this action, Plaintiff employed Mr. Rosales and was insured by Defendant XL Insurance.

42. Due to Defendant XL Insurance's refusal to provide a defense and refusal to reconsider its position, Kingkiner has no adequate remedy at law and is being irreparably harmed.

43. As a result of Defendant XL Insurance's refusal to honor its obligation to provide a defense in the Santos Estate Action, Kingkiner has suffered and will continue to suffer damages, including, but not limited to costs and expenses it is and will continue to incur in defending the Santos Estate Action.

44. Kingkiner therefore requests this Court to enter a declaratory judgment in favor of Plaintiff and against Defendant XL Insurance declaring that Defendant XL Insurance holds a duty to fully defend and indemnify Kingkiner, in connection with the Santos Estate Action under Defendant XL Insurance's Commercial General Liability Policy, and to award Kingkiner its out-of-pocket costs and legal fees as taxable costs.

WHEREFORE, Kingkiner's counsel requests this Court to enter a judgment on behalf of Kingkiner and against XL Insurance, declaring that it is required to provide a defense to Kingkiner in the Santos Estate Action and to reimburse Kingkiner for its expenditures to defend the Santos Estate Action, plus interest and

costs of this action, including but not limited to reasonable attorney's fees and such other relief as this Court deems just and proper.

COUNT THREE
ACTION ON INSURANCE POLICY – BAD FAITH
VIOLATION OF 42 PA. CONS. STAT. § 8371 – KINGKINER V. NJM
INSURANCE

45. Kingkiner incorporates by reference the preceding allegations of the Complaint as if fully set forth herein at length.

46. As an insurance company conducting business in Pennsylvania, Defendant NJM Insurance owed Kingkiner a fiduciary duty to act in good faith, and for the interests of its insured.

47. Defendant NJM Insurance has acted in bad faith by refusing to provide workers compensation benefits, dilatory communication, incorrect interpretations of its obligations under its Workers Compensation and Employer Liability Insurance Policy, and refusal to fully defend and indemnify Plaintiff in the Santos Estate Action by among other things:

- a. Failing to honor Plaintiff's repeated demands for coverage because of erroneous interpretations of the facts, the allegations in the lawsuit, and how they apply to coverage;
- b. Failing to provide a reasonable explanation of the denial of coverage under the policy of insurance;
- c. Arbitrarily denying coverage for the claims due to internal errors;

- d. Recklessly or deliberately mishandling Plaintiff's demand to confirm coverage for defense and indemnification under the policy for the Santos Estate Action;
- e. Placing their own financial interest in saving costs and exposure on the claim above Plaintiff's right to coverage as its insured;
- f. Placing Plaintiff's assets at risk of a potential multi-million dollar judgment to minimize their own exposure to risk;
- g. Wrongfully offering the services of an attorney not licensed to practice law in Pennsylvania;
- h. And such other acts and omissions as will be set forth during the pendency of this matter.

48. Furthermore, Defendant NJM Insurance had no reasonable basis for denying coverage under Workers Compensation and Employers Liability Policy, and Defendant NJM Insurance knew or should have known that they lacked a reasonable basis to deny Kingkiner's claim for coverage for its potential vicarious liability for the acts of its employees.

49. As such, Defendant NJM Insurance's conduct constitutes bad faith in violation of 42 Pa. C.S. § 8371, under which they are liable to Kingkiner for interest, punitive damages, Court costs and reasonable attorneys' fees incurred in this matter.

WHEREFORE as a result of Defendant NJM Insurance's actions and inactions, Kingkiner has suffered damages for, including but not limited to, attorneys' fees and out of pocket costs, to obtain confirmation of the coverage

afforded to Kingkiner by Defendant NJM Insurance under the Workers Compensation and Employers Liability Policy, costs and expenses incurred in defending the Santos Estate Action exposes its assets to a verdict and judgment for which coverage should be provided and for any and all other damages.

COUNT FOUR
ACTION ON INSURANCE POLICY – BAD FAITH
VIOLATION OF 42 PA. CONS. STAT. § 8371 – KINGKINER V. XL
INSURANCE

50. Kingkiner incorporates by reference the preceding allegations of the Complaint as if fully set forth herein at length

51. As an insurance company conducting business in Pennsylvania, Defendant XL Insurance owed Kingkiner a fiduciary duty to act in good faith, and for the interests of its insured.

52. Defendant XL Insurance has acted in bad faith by refusing to provide workers compensation benefits, dilatory communication, incorrect interpretations of its obligations under its Commercial General Liability Policy and agree to fully defend and indemnify Kingkiner in the Santos Estate Action by among other things:

- i. Failing to honor Plaintiff's repeated demands for coverage because of erroneous interpretations of the facts, the allegations in the lawsuit, and how they apply to coverage;

- j. Failing to provide a reasonable explanation of the denial of coverage under the policy of insurance;
- k. Arbitrarily denying coverage for the claims due to internal errors;
- l. Recklessly or deliberately mishandling Plaintiff's demand to confirm coverage for defense indemnification under the policy for the Santos Estate Action;
- m. Placing their own financial interest in saving costs and exposure on the claim above Plaintiff's right to coverage as its insured;
- n. Placing Plaintiff's assets at risk of a potential multi-million dollar judgment to minimize their own exposure to risk;
- o. And such other acts and omissions as will be set forth during the pendency of this matter.

53. Furthermore, Defendant XL Insurance had no reasonable basis for denying coverage under the Commercial General Liability Policy, and Defendant XL Insurance knew or should have known that they lacked a reasonable basis to deny Kingkiner's claim for coverage for its potential vicarious liability for the acts of its employees.

54. As such, Defendant XL Insurances' conduct constitutes bad faith in violation of 42 Pa. C.S. § 8371, under which they are liable to Kingkiner for interest, punitive damages, Court costs and reasonable attorneys' fees incurred in this matter.

WHEREFORE as a result of Defendant XL Insurance's actions and inactions, Kingkiner has suffered damages for, including but not limited to,


attorneys' fees and out of pocket costs, to obtain confirmation of the coverage afforded to Kingkiner by Defendant XL Insurance under the Commercial General Liability Policy, costs and expenses incurred in defending the Santos Estate Action exposes its assets to a verdict and judgment for which coverage should be provided and for any and all other damages.

CONCLUSION

Plaintiff Kingkiner Tree Service, hereby demands judgment in its favor against Defendants NJM Insurance and XL Insurance for damages, including but not limited to the costs and expenses it has expended, together with treble damages, punitive damages attorney's fees and interest all in excess of \$75,000.00 as well as interest, Court costs, reasonable attorneys' fees incurred in this matter and such other relief as this Court deems just and proper.

Respectfully submitted,

SHERR LAW GROUP, LLP

By: 
Anthony Sherr, Esquire